

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No.51 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-****HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

BILESHWAR KHAND UDYOG SAHAKARI MANDLI LTD -
Applicant(s)

Versus

COMMISSIONER OF INCOME-TAX - Respondent(s)

Appearance :

MR RK PATEL for MR MK PATEL for Applicant(s) : 1,
 MR BB NAIK for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**and****HONOURABLE MS.JUSTICE H.N.DEVANI****Date : 01/09/2005****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)**

1. The Income-tax Appellate Tribunal, Ahmedabad
 Bench 'B' has referred the following

questions under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of both the assessee and the Revenue:

“At the instance of the assessee for **A.Y. 1981-82 & 1982-83:**

“Whether on the facts and circumstances of the case the Tribunal was justified in law in holding that the liability to claim deduction of Rs.21,67,041/- had not arisen and the assessee was not entitled to claim the same as such either in A.Y. 1981-82 or A.Y. 82-83 based on final judgments of Gujarat High Court and Supreme Court of India and discharging of the said liability by payment ?”

At the instance of the Revenue:

(i) **For A.Ys. 78-79 to 80-81**

“Whether, the Appellate Tribunal is right in law and on facts in directing the assessing officer to allow the provision of interest made by the assessee as deduction ?”

(ii) For A.Ys. 1979-80 to 83-84:

“Whether the Appellate Tribunal is right in law and on facts in directing the IT0 to allow deduction towards guest house expenses ?”

2. The Assessment Years are 1978-79, 1979-80, 1980-81, 1981-82, 1982-83 and 1983-84. The respective accounting periods are years ended on 30th June, 1977 to 30th June, 1982.
3. The facts relatable to question raised at the instance of the assessee for Assessment Years 1981-82 and 1982-83 may be briefly stated. The Central Government fixed price of levy sugar at Rs.124.59 per quintal for the crushing season 1971-72. The assessee challenged the aforesaid fixation of price and obtained an interim order from this High Court, whereunder the assessee along with other sugar factories was permitted to sell

levy sugar at Rs.150/- per quintal. Therefore, the assessee sold levy sugar at a price higher than the controlled price. On 12th March, 1973 the petition came to be withdrawn by the assessee and was accordingly dismissed by the High Court.

4. It appears that in 1975 Union of India filed Civil Applications in the Special Civil Applications which were already rejected seeking direction qua the assessee to refund the excess amount recovered by the assessee on sale of levy sugar under the interim order. The claim of recovery was for a period commencing from 31st July, 1972 and ending on 12th March, 1973. During pendency of the Civil Applications filed by the Union of India the Levy Sugar Price Equalisation Fund Act, 1976 (the Equalisation Fund Act) came into existence and under the provisions

of the Equalisation Fund Act the Central Government constituted a fund known as Levy Sugar Price Equalisation Fund (Equalisation Fund). As per the provisions of the Act the excess price recovered by sugar factories was required to be paid into the Equalisation Fund as constituted under the Equalization Fund Act. According to Union of India an amount of Rs.54,75,597/- was recoverable from the assessee.

5. When the Civil Applications came up for hearing before the High Court two fold contentions were raised on behalf of Union of India. The first contention was that the Court should exercise its inherent jurisdiction and direct the respondents (sugar factories) to return the undue advantage or benefit which the respondents had obtained by virtue of the interim order of this Court. The second contention was

that in light of the Equalisation Fund Act the excess realizations were required to be deposited in the Equalisation Fund and hence, the respondents be directed to comply with the mandatory provisions of the Equalisation Fund Act. This Court accepted both the contentions. After hearing the parties and also considering the provisions of the Equalisation Fund Act, with special reference to provisions of Section 3(3) of the Equalisation Fund Act, the following direction was made:

“Respondents are directed to credit to Levy Sugar Price Equalisation Fund the difference between the controlled price of Rs.124.59 P. and the price recovered by them in respect of Levy Sugar sold by them to Union Government, State Government or their nominees between 31st July, 1972 to 12th March, 1973. They shall also credit to that Fund Interest at the rate of $12\frac{1}{2}\%$ per annum on all excess realisations made by them. The

interest shall run from the date or dates on which they made the excess realisation or excess realisations.”

This order was made on 2nd May, 1980.

6. On the strength of this order the assessee made a claim for Assessment Years 1981-82 and 1982-83 claiming a deduction of Rs.21,67,041/-. According to the assessee the amount was allowable either in the Assessment Year 1981-82 or Assessment Year 1982-83. The Assessing Officer rejected the claim and the assessee moved the Commissioner (Appeals) by way of additional grounds. The claim was rejected by the Commissioner (Appeals).

7. The assessee carried the matter in appeal before the Tribunal. The Tribunal came to the conclusion that in light of the directions made by this Court the claim that

the liability accrued in the Assessment Year 1981-82 or Assessment Year 1982-83 was liable to be rejected. According to the Tribunal the excess realization having been made much prior to the decision of the High Court and the fact that the assessee was statutorily liable to pay interest on such excess realization from the date of amount realized indicated that the liability to make payment of the excess amounts so realized by the assessee arose even before the High Court delivered the judgment. The Tribunal, therefore, rejected the claim made by the assessee.

8. Mr.R.K. Patel, learned advocate appearing on behalf of the assessee, submitted that the assessee had recovered the amounts stated to be in excess by virtue of the interim orders made by the High Court and hence, the Revenue should not be heard to state that

the amount was incorrectly recovered. That in fact before the date the High Court passed the order in Civil Applications filed by Union of India there is no accrued liability in so far as the assessee is concerned, and it was on the day the High Court delivered the judgment that for the first time the assessee's liability to refund the excess amount arose. In support of this proposition he placed reliance on decision of this Court rendered in case of *Saurashtra Cement and Chemical Industries Ltd. Vs. Commissioner of Income-tax*, [1995] 213 ITR 523 (Guj), with special reference to the observations made by the Court at Pages 531 and 532 of the reports in relation to question No.5. It was submitted that merely because an amount was expended in the accounting year in question, though relatable to an earlier period, the claim

cannot be denied only on the ground that it is relatable to an earlier period if it could be shown that the demand had been made for the said amount in the previous year relevant to the Assessment Year in question. That there was no legal bar in making such a claim and, therefore, by necessary implication, the revenue authorities could not exclude an amount which was otherwise expended in fact. He also placed reliance on the decision of the Apex Court in case of *Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Limited*, [1964] 53 ITR 134 (S.C.) for the proposition that the concept of reopening of accounts was unknown even for the purposes of tax laws. Thus, according to him, the assessee should be granted the deduction in one of the years under consideration as the accounts of the

earlier years had already been finalized and closed. Lastly, it was submitted that if the claim is denied in the years under consideration the assessee would have no remedy despite the claim being a legitimate claim.

9. Mr.B.B.Naik, learned Standing Counsel appearing on behalf of the Revenue, invited attention to the impugned order of the Tribunal as well as the judgment of this High Court rendered in Civil Applications filed by Union of India to submit that the liability in question, under no circumstances, was relatable to the Assessment Years in question. That the liability was in fact relatable to the point of time when the excess realization had been made by the assessee. That by virtue of the provisions of and the orders made under the Essential Commodities Act the assessee was

entitled to recover only the specified price and any excess recovered was liable to be returned, the recovery being illegal. He submitted that even otherwise on the day when the assessee withdrew the writ petitions the interim order ceased to operate and the assessee became liable to make payment on that day viz. 12th March, 1973. Therefore, in any view of the matter the liability was neither relatable to Assessment Year 1981-82 or 1982-83.

10. The position in law is well settled. A statutory liability arises as soon as the specified event occurs or the condition stipulated by the statute gets fulfilled [*Kedarnath Jute Mfg. Co. Ltd. Vs. Commissioner of Income-tax (Central), Calcutta*, [1971] 82 ITR 363 (S.C.)]. As against that in case of a contractual

liability, the liability arises or accrues only when the dispute is finally adjudicated upon or is settled amicably [*Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara Vs. Swadeshi Cotton and Flour Mills Private Limited*, [1964] 53 ITR 134 (S.C.)].

11. In the present case it is not the case of the assessee that the liability is contractual. In fact statutorily the assessee was entitled to recover only the fixed price or the controlled price. However, by virtue of the interim order made by this Court in the writ petitions moved by the assessee, the assessee was permitted to recover an amount larger than what was permissible under the Levy Sugar (Price Determination) Order, 1972 read with the Levy (Sugar Control) Order, 1972. The writ petitions came to be withdrawn on 12th March,

1973. As the assessee did not return the excess amount recovered by it, Union of India was required to move the High Court by preferring Civil Applications seeking recovery. The High Court passed the order, as already noted, on 2nd May, 1980. The assessee challenged the same before the Hon'ble Supreme Court and on 31st July, 1980 the petition was admitted, but limited to charging of interest while rejecting the principal contention viz. the assessee was not liable to return the excess realized. It is in this context that the aforesaid claim has been made in Assessment Year 1981-82 on the basis of the judgment of the High Court rendered on 2nd May, 1980, and alternative claim for Assessment Year 1982-83 based on the order of the Apex Court dated 31st July, 1980.

12. The assessee's claim is not liable to be accepted for either of the years. It is apparent that in so far as the assessee is concerned, the liability has not arisen on the day the High Court passed the order directing the assessee to return the excess realization, nor on the day when the Hon'ble Supreme Court dismissed the assessee's challenge to the aforesaid order made by the High Court.
13. The appeal which was admitted by the Apex Court in relation to interest payable on such excess realization was finally heard and decided on 10th February, 1999 as reported in AIR 1999 Supreme Court 1198. One of the contentions raised before the Apex Court is the same that has been raised before this Court viz. interim orders on the basis of which the excess amounts were realized by the assessee having not been set

aside no liability to refund the same arose when the writ petitions were withdrawn on 12th March, 1973. The Apex Court rejected the contention by holding the same to be wholly untenable and held that "It is not disputed that on the dismissal of the writ petitions the interim orders passed therein were automatically stood discharged." "In the present case when the High Court dismissed the writ petitions the interim order passed therein became non-existent and in-operative." Hence, on 12th March, 1973 the right which the assessee was exercising to collect amount more than the controlled price came to an end, and accordingly, at least on that day, the liability arose to return the amount, the amount having admittedly been collected over and above the price fixed under the Control Order.

14. Examining the issue from a slightly different angle also would go to show that even if, for the sake of argument, the assessee is permitted to contend that merely on withdrawal of the writ petitions no liability arose, yet there is no accrual of liability in any of the Assessment Years under consideration. The Equalisation Fund Act having come on statute in 1976 and the Central Government having constituted Equalisation Fund under the provisions of the said Act, the assessee became liable by virtue of provisions of the said Act to return the excess realization, with special reference to Section 3(3) of the Equalisation Fund Act. Clause(a) of sub-section 3(3) of the Equalisation Fund Act is clear and unambiguous. It provides that in case of any excess realization made before commencement of the said Act, within

thirty days from such commencement the producer shall credit to the fund the amount representing such excess realizations, together with interest due thereon at the rate of twelve and a half percent, per annum, from the date on which such amount was realized by him. Therefore, on expiry of thirty days from the date of the commencement of the Equalisation Fund Act the assessee became liable to return the excess realization along with interest at the stipulated rate. Thus, in any view of the matter, the liability was statutorily fastened by the Equalisation Fund Act in 1976. The assessee's contention that the liability arose by virtue of the High Court judgment dated 02.05.1980 or the order of the Apex Court rejecting its appeal on 31st July, 1980, therefore, cannot be accepted for the aforestated reasons.

15. The Tribunal was justified in law in holding that the liability to claim deduction of Rs.21,67,041/- had not arisen and the assessee was not entitled to claim the same as such either in Assessment Year 1981-82 or Assessment Year 1982-83, despite the liability being discharged by payment based on the judgment of Gujarat High Court and order of the Hon'ble Supreme Court.
16. Coming to the first question at the instance of the Revenue, the necessary facts are : for Assessment Year 1978-79 to 1980-81 the assessee made provision of an amount of Rs.9,38,167/-, Rs.8,53,754/- and Rs.18,274/- respectively. The same was disallowed by the Assessing Officer on the ground that it does not relate to any of the Assessment Years in question, while partially allowing a sum of

Rs.2,83,098/- in Assessment Year 1978-79.

The assessee succeeded before the CIT (Appeals) and the said order has been confirmed by the Tribunal.

17. As per order made by the Assistant Commissioner of Sales Tax on 29th April, 1974 the assessee was not required to pay any Sales Tax and, therefore, obtained a refund of Sales Tax paid amounting to Rs.59,08,519/-. This amount was credited to the Profit & Loss A/c. for accounting period 1974-75. However, the Dy. Commissioner of Sales-tax issued notice dated 4th February, 1975 seeking recovery of the said amount along with interest on the ground that the refund was wrongly issued.

18. The assessee challenged the said order but did not succeed before the High Court.

Subsequently, after negotiations, on 29th August, 1975 an order came to be made by the Dy. Commissioner of Sales-tax requiring the assessee to make payment of Rs.59,08,519/-, which was admittedly paid in installments. Thereupon, it appears that there was a dispute amongst the parties in relation to the interest payable on the aforesaid sum. The assessee approached the State Government who, vide order dated 30th May, 1977, held that the assessee should be charged interest at a reduced rate and accordingly, on 14th June, 1977, the Dy. Commissioner of Sales-tax worked out three installments in which interest was payable to the tune of Rs.4,31,234/-, Rs.4,75,512/- and Rs.5,26,117/-. It appears that even at this stage the rate at which interest was worked out was disputed and subsequently the same was settled vide letter dated 24th June,

1977. The assessee, accordingly, made provisions of the sums as aforestated, out of which the Assessing Officer had granted partial relief for Assessment Year 1978-79.

19. Heard Mr.B.B.Naik, learned Standing Counsel for the applicant-Revenue. He accepts the fact that the Revenue does not dispute allowability of interest as a deductible item of expenditure. The only lis between the parties is as to the year of allowability.

20. In these circumstances, considering the fact that this is not a case where the assessee was disputing the liability by raising frivolous defence, nor is it a case where originally refund was obtained fraudulently, it is not necessary to enter into the limited controversy to determine the year of

allowability, the right to claim deduction not being disputed. The Court is adopting this approach and taking this view in light of the fact that the Assessment Years involved are 1978-79 to 1980-81 with respective accounting periods ended on 30th June, 1977 to 30th June, 1979. Therefore, concurrent orders made by the CIT (Appeals) and the Tribunal are not disturbed on this limited count.

21. The Tribunal was, therefore, justified in allowing the provisions of interest payable to the Sales-tax Department as a deduction for Assessment Years 1978-79 to 1980-81.

22. In so far as second question referred at the instance of the Revenue is concerned, it is an admitted position between the parties that the Tribunal has followed its own order

for earlier years in the assessee's own case. This was challenged by Revenue. A copy of -decision rendered by this Court on 6th November, 2001 in Income Tax Reference No.153 of 1994 for Assessment Years 1984-85 and 1985-86 has been placed on record wherein identical controversy has been decided in favour of the assessee following reported decision in case of *Commissioner of Income-tax Vs. Ahmedabad Mfg. And Calico Printing Co. Ltd.*, [1992] 197 ITR 538 (Guj.) of this Court.

23. In the circumstances, it is not necessary to set out facts and contentions in detail. For the reasons stated in the earlier order of this Court, it is held that the Tribunal was right in law in directing the Assessing Officer to allow deduction towards guest house expenses for Assessment Years 1979-80

to 1983-84.

24. Accordingly, question referred at the instance of the assessee for Assessment Years 1981-82 and 1982-83 is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

25. Similarly, both the questions referred at the instance of the Revenue are answered in the affirmative i.e. in favour of the assessee and against the Revenue.

26. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

*Bhavesh**